

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
VALDOSTA DIVISION**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**JOSE CASTANEDA,**

**Defendant.**

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**Civil Action No.  
7:96-CR-43 (HL)**

**ORDER**

Before the Court is the United States' Motion to Dismiss the Indictment Without Prejudice (Doc. 65). For the following reasons, the Motion is granted.

Pursuant to Federal Rule of Criminal Procedure 48(a), the "government may, with leave of court, dismiss an indictment . . . ." Fed. R. Crim. P. 48(a). A court may deny the government leave to dismiss an indictment without prejudice only when the defendant shows that the government's dismissal is sought in bad faith, or when the defendant shows that he is prejudiced in his ability to challenge the prosecutor's motives because the government failed to articulate its reasons for the dismissal. United States v. Dyal, 868 F.2d 424, 428 (11th Cir. 1989). Under this standard, the government is entitled to a rebuttable presumption that it acted in good faith in filing a motion to dismiss an indictment. Id.

The United States seeks to dismiss the indictment issued against the Defendant because the Defendant has been a fugitive since 1998. The Court finds

that this reason is a sufficient ground for dismissal. The Defendant is not present to rebut the presumption that the United States has filed this Motion in good faith. There is also no other information before the Court which warrants denying the Motion. Accordingly, the indictment issued against the Defendant is dismissed without prejudice.

**SO ORDERED**, this the 18<sup>th</sup> day of February, 2010.

*s/ Hugh Lawson*  
**HUGH LAWSON, SENIOR JUDGE**